

SECTION I

THE NURSING HOME COMMUNITY ADVISORY COMMITTEE

NURSING HOME COMMUNITY ADVISORY COMMITTEES

A. Purpose

Nursing home residents in the United States are a particularly vulnerable population and are often too frail, sick, isolated, or reluctant to assert their own rights. Therefore, Congress saw it fit to establish the Nursing Home Patients' Bill of Rights in 1977 and to require a long term care ombudsman program in each state. In 1977, the NC General Assembly enacted a comprehensive Bill of Rights which also establishes a Nursing Home Community Advisory Committee in every county that has a nursing home. This extended the Ombudsman Program to the local level in a more comprehensive way. The committee's primary function is to maintain the spirit of the Nursing Home Patients' Bill of Rights. The purpose of this law is to involve the local community, through this volunteer citizens group, in an effort to improve the quality of care for residents of nursing homes. A major responsibility of advisory committees is to monitor nursing home care and resolve grievances of nursing home residents and their families. An equally important role of these committees is to serve as the catalyst for increased community interaction with nursing homes and to promote better community education and awareness of issues affecting the residents. This includes working cooperatively with facility administrators and staff, as well as those local agencies and organizations that have an impact on nursing homes and their residents. A similar committee, the Adult Care Home Community Advisory Committee, serves the residents of adult care homes. People in adult care homes typically need a place to live, some help with personal care (like dressing, grooming and keeping up with medications) and some limited supervision. Medical care may be provided on occasion but is not routinely needed. Medication may be given by designated, trained staff. These homes vary in size from family care homes of two to six residents to adult care homes of more than 100 residents. These homes were previously called "domiciliary homes." Some people refer to them as "rest homes." The smaller homes, with 2 to 6 residents, are still referred to as family care homes.

The local emphasis of the community advisory committees enables the committees to obtain a firsthand knowledge of conditions in nursing homes. This focus allows the committees to work toward improving the quality of care for local nursing home residents. Although the committees maintain a community focus, the committees experiences and efforts are tied into to the broader state-wide network of the Ombudsman Program. Along with the over 1,100 nursing and adult care home community advisory committee members state-wide, there are Regional Ombudsmen covering all 100 counties and a State Ombudsman Office serving all regions and counties. This network of advocates at the community, regional and state levels works to improve the quality of care and the quality of life for residents in long-term care facilities.

B. Statutory Requirements

1. Committee Appointments

- a. Role of county commissioners
Boards of county commissioners have been delegated the responsibility for appointing Nursing Home Community Advisory Committee members. This is an important role since the effectiveness of a committee depends to a large extent on its members.

The legislation that mandates these committees stipulates certain criteria which must be adhered to in the appointment of committee members:

- (1) Each county that has a nursing home must establish a community advisory committee. The number of persons on a committee is determined by the number of nursing homes in the county. In a county with three nursing homes or less, the committee shall have five (5) members. In a county with four (4) or more nursing homes, the committee shall have one additional member for each nursing home in excess of three, and may have up to five additional members appointed at the discretion of the county commissioners.
- (2) In a county with four (4) or more nursing homes, the committee shall establish a subcommittee of no more than five (5) and no less than (3) members. Each member must serve on at least one subcommittee.
- (3) The county commissioners must choose not less than one-third, but as close to one-third as possible, of the committee members from among persons nominated by a majority of the chief nursing home administrator(s) in the county (a chief nursing home administrator is the administrator having the recognized responsibility for the operation of a home). If the nursing home administrators fail to make a nomination within 45 days after written notification has been sent to them by the county commissioners requesting a nomination, such appointments may be made by the county commissioners without nominations. Councils on aging and other agencies, groups, and organizations that have an impact on the elderly should be contacted for suggestions concerning the remaining committee member nominations.
- (4) The following persons are excluded, by legislation, from serving on the committee:
 - (a) Persons or immediate family members of persons with a financial interest in a home served by a committee.

(b) An employee or governing board member or immediate family member of an employee or governing board member of a home served by a committee. (A person paid by a home as a consultant is considered an employee.)

(c) The immediate family member of a resident in a home served by a committee.

An "immediate family member" is defined as mother, father, sister, brother, spouse, child, grandmother, grandfather, and in-laws for the above. Whenever an immediate family member of an appointee enters a facility served by the committee, that appointee becomes ineligible immediately.

(5) Any county commissioner who is appointed to the committee shall be deemed to be serving on the committee in an ex-officio capacity.

(6) Each committee member must be a resident of the county which the committee serves.

(7) Each committee member shall serve an initial term of one year (the term begins with date of appointment). Any person re-appointed to a second or subsequent term in the same county shall serve a three year term. In regard to re-appointments for second or subsequent terms, persons who were originally nominees of nursing home chief administrators, or who were appointed by the county commissioners when the nursing home administrators failed to make nominations, may not be re-appointed without the consent of a majority of the nursing home chief administrators within the county. If the nursing home chief administrators fail to approve or reject the re-appointments within 45 days of being requested by the County Commissioners, the Commissioners may re-appoint the members if they so choose.

(8) Vacancies on the committee shall be filled by appointment of a person for a one-year term. Any person replacing a member nominated by the chief nursing home administrators or a person appointed when the chief administrators failed to make a nomination shall be selected from among persons nominated by the administrators.

(9) If the county commissioners fail to appoint members to a committee, or fail to fill a vacancy, the appointment may be made or vacancy filled by the Secretary of the North Carolina Department of Health and Human Services no sooner than 45 days after the commissioners have received the nomination or approval, or no sooner than 45 days after the nursing home administrators' 45-day period for action has expired.

b. Additional Guidelines

- (1) Special care should be taken to see that persons with the interest, the time, and knowledge of nursing home matters are selected to serve on the committee. To the extent possible, committees should be composed of persons that represent a wide range of backgrounds, including those with interest in the concerns of older adults, demonstrated involvement in the community, and a willingness to serve.
- (2) The committee shall elect from its members a chairman and other officers, as needed, to serve a one-year term. The committee should adopt by-laws to facilitate functions of the committee.
- (3) Members of the committee shall serve without compensation, but may be reimbursed for the actual expenses incurred by them in the performance of their duties from local funds. The level of reimbursement and the funding must be set by the County Commissioners.
- (4) A list of the committee members, including addresses and indication of members who are nominees of the chief nursing home administrators, along with dates of expiration of the members' terms, shall be filed by the Regional Ombudsman with the State Division of Aging.
- (5) Each committee member must receive training as specified by the State Division of Aging prior to exercising any duties and responsibilities. This training will be provided by the Regional Long Term Care Ombudsman with assistance from other appropriate available resources such as Departments of Social Services, Health Departments, Mental Health, and nursing home staff.

2. Role of Committee Members

a. Duties

- (1) Each committee shall apprise itself of the general conditions under which the residents are living in the homes, and shall work for the best interests of the residents. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level.
- (2) At a minimum, each committee shall quarterly visit the nursing home(s) it serves. For each official quarterly visit, a majority of the committee members shall be present. This visit should normally be made between the hours of 10 a.m. and 8 p.m. In addition, each committee may visit the nursing home (s) it serves whenever it deems it necessary to carry out its duties. In counties with four or more nursing homes, the subcommittee assigned to a home shall perform the duties of the committee under this

subdivision, and a majority of the sub-committee members must be present for any visit.

- (3) Each individual member of a committee shall have the right between 10 a.m. and 8 p.m. to enter into the facility the committee serves, in order to carry out the members' responsibilities. In a county where subcommittees have been established, this right of access shall be limited to particular homes served by the subcommittee to which the member has been appointed.
- (4) The committee or subcommittee may communicate through its chairman with the Department of Health and Human Services or any other agency in relation to the interest of any resident. The names of all complaining persons and residents shall remain confidential unless written permission is given for disclosure.
- (5) Each home shall cooperate with the committee as it carries out its duties.
- (6) Before entering into any nursing home, the committee, subcommittee, or member shall identify him/herself to the person present at the facility who is in charge of the facility at that time (1977, c. 897, s. 2; 1977, 2nd Sess., c. 1192, s. 1; 1983, c. 143, ss. 4-9; c. 775, s. 1.).

b. Confidentiality

Sec. 712 (5) (C) iii) of the Older Americans Act requires that the State must establish procedures to protect the confidentiality of residents' records and the identity of the complainant and/or resident. Ombudsman files are to be kept confidential with disclosure only at the discretion of the State Ombudsman or the person designated by the State Ombudsman to disclose files and records. The ombudsman's "discretion" does not include the right to disclose the name of a complainant or resident without the written permission by the complainant or resident or his legal representative, the complainant or the resident's oral consent which is documented contemporaneously in accord with state policy or as required by court order. North Carolina law also stipulates that the committees observe the same confidentiality requirements.

c. Open Meetings Law

The NC Open Meetings Law applies to NHCAC meetings; therefore, anyone from the general public may attend. If the committee needs to discuss an individual resident and/or complaint during a meeting where others are present, the committee must go into executive session (committee members and ombudsman only), in order to comply with the confidentiality requirement.

d. Access to Information

(1) Records: Under special circumstances involving specific complaint investigations, committees may need to view a resident's personal and/or medical records. In order to view such records, several conditions must be met. The committee is permitted access to the records if: (a) they have the permission of the resident or the legal representative of the resident; or (b) if the resident is unable to consent to the review and has no legal representative; or (c) access to the records is necessary to investigate a complaint, **and** a legal guardian of the resident refuses to give the permission, **and** the committee has reasonable cause to believe that the guardian is not acting in the best interests of the resident; **and** the committee receives the approval of the State Ombudsman.

(2) Facilities: The Nursing Home Community Advisory Committees have access to facilities on a 24-hour basis. Any member may enter a facility he/she serves between the hours of 10:00 a.m. and 8 p.m. A quorum of the committee or designated subcommittee may enter at any time necessary to carry out its duties.

C. **Committee Support Network**

In addition to the support of the Regional Ombudsman, an agency or agencies may be identified in each county to provide local back-up. In those counties with an organized aging program/Council on Aging, it is hoped this agency will assume this responsibility. In cases where there is no Council on Aging or it is not feasible for the Council to assume this role, the ombudsman will coordinate with other agencies such as the local department of social services, or the mental health program, to provide support.

The support provided by local back-up agencies will vary from county to county; however, it is hoped that each agency will serve as a receiving point for requests of information and for complaints regarding nursing home matters. Since community advisory committee members receive no compensation for their services, it may not always be practical to have their private telephone numbers made available to the general public. Agencies, such as Councils on Aging, that have established public telephone numbers could provide this service by utilizing their existing staff to handle information and referral functions. Complaints or other appropriate matters would be referred by the agency to the advisory committee through its chairperson.

Other ways in which the local agency(ies) can be supportive are:

- to assist the advisory committee in publicizing the needs of the institutionalized elderly and the role of the nursing home in the health care delivery system.
- to keep abreast of issues affecting long term care in order to provide current and relevant information to committees.
- to assist the advisory committee in coordinating with local agencies and organizations when needed to carry out their job functions.
- to assist the advisory committee in promoting increased community involvement with nursing homes in the area.